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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,542	03/16/2004	Konstantinos Roussos	67272-8060.US01	3726
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Perkins Coie LLP Network Appliance, Inc. P.O. Box 2168 Menlo Park, CA 94026			EXAMINER JEAN, FRANTZ B	
			ART UNIT 2154	PAPER NUMBER
			MAIL DATE 05/01/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/802,542	<b>Applicant(s)</b> ROUSSOS ET AL.	
	<b>Examiner</b> Frantz B. Jean	<b>Art Unit</b> 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to applicants' response filed on 01/20/08. Claims 1 and 4-30 are pending in the application.

The amendment filed on 1/30/08 has been entered in the file.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 4-30 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander, III et al. hereinafter Alexander US patent number 6,513,155 in view of Murstein et al. (hereinafter Murstein) US patent number 6,789,046.

As per claim 1, Alexander teaches a method comprising: automatically discovering counters for a remote device in a network (fig 18; col 11 lines 45-50); selecting at least one counter (col. 14 lines 13-15); and collecting data for each counter (col. 20 lines 35-47). However, Alexander does not explicitly detail on predefining a plurality of counter group templates, wherein each counter group templates comprising a counter associated with an object. Murstein is directed to monitoring, gathering and aggregating

performance metrics. The system comprises predefining time period at a plurality members for one or more performance metrics (see abstract; col. 2 lines 15-65; fig 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Murstein predefining counter group to Alexander's system because it would facilitate quick and accurate review of performance objects. One ordinary skill in the art at the time of the invention would be motivated to do so to quickly find problems or determine a state of an object, thereby increasing Alexander's system performance and reliability (see col. 1 line 60 to col. 2 line 14).

As per claim 4, Alexander-Murstein teaches automatically discovering performance objects (col. 24 lines 17-30).

As per claim 5, Alexander-Murstein teaches instantiating the selected counters based on predefined mapping performance (Murstein abstract and summary of invention).

As per claim 6, Alexander-Murstein teaches storing the collected data for the counters in each group separately (Murstein abstract and summary of invention; fig 5).

As per claims 7-8, Alexander-Murstein teaches allowing a user to select one of a plurality of predefined views and presenting data to the user, in accordance with selected view (see Alexander fig 18).

As per claim 9, Alexander-Murstein teaches automatic discovering and data collecting are performed in parallel (Alexander col. 24 lines 17-21).

As per claims 10-12, they contain the same limitations as discussed above in claims 1 and 4-9, therefore, they are rejected under the same rationale.

As per claim 13, Alexander teaches a method comprising: a counter and an object (fig. 18); and for at least one remote device in a network that has the particular object and counter, automatically sampling the counter (col. 17 lines 34-67). However, Alexander does not explicitly detail on a tuple (predefining mapping of performance objects).

Murstein is directed to monitoring, gathering and aggregating performance metrics. The system comprises predefining mapping of performance objects (see abstract; col. 2 lines 15-65; fig 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Murstein predefining mapping of performance objects to Alexander's system because it would facilitate quick and accurate review of performance objects. One ordinary skill in the art at the time of the invention would be motivated to do so to quickly find problems or determine a state of an object, thereby increasing Alexander's system performance and reliability (see col. 1 line 60 to col. 2 line 14).

As per claim 14, Alexander-Murstein teaches sampling rate (Alexander col. 17 lines 41-42 and Murstein col. 2 lines 14-65).

As per claim 15, Alexander-Murstein teaches saving results of sampling (Alexander col. 18 lines 19 et seq).

As per claims 16-17, Alexander-Murstein teaches a plurality of counters, a sample period, and a sample buffer size (Murstein Abstract, col. 2 lines 14-65 and fig 5).

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As per claim 18, Alexander-Murstein teaches displaying sample data for each counter (Alexander fig 32).

As per claims 19-30, they contain the same limitations as discussed above in claims 1 and 4-18. Therefore, they are rejected under the same rationale. Furthermore, Alexander-Murstein teaches a processor (202,204) and a memory (208, 209).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantz B. Jean/

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